month he renders himself liable to punishment. If deposit is made by the tenant against the provisions of section 6(1) (a) and the amount is withdrawn by the landlord, he becomes liable to penal action under section 19. In the light of the aforesaid reasoning also the deposit of the rent in this case cannot be held to be a proper tender. In the aforesaid view, I get support from the observations of the Supreme Court in *Shri Vidya Prachar Trust's case* (*supra*). After taking into consideration all the circumstances, I am of the opinion that the tenant has not tendered the rent in accordance with the proviso to section 13(2) (i) of the Act and the order of ejectment passed by the Courts below is correct.

(59) I, therefore, dismiss the revision petition but, in the circumstances of the case, leave the parties to bear their own costs.

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*N. K. S.*

LETTERS PATENT APPEAL

*Before Gurnam Singh and Harbans Lal, JJ.*

RAMISHAR LAL,—*Appellant.*

*versus*

THE MUNICIPAL COMMITTEE, KAPURTHALA ETC.,—

*Respondents.*

*Letters Patent Appeal No.* 715 *of* 1973.

November 9, 1976.

*Punjab Municipal Act (III of* 1911)*—Sections* 12-*D and* 12-*E—Newly elected committee—Co-option made after thirty days of the election—Whether valid—Power of nomination—Whether vests in the Government.*

*Held,* that co-option under sections 12-A, 12-B and 12-C of the Punjab Municipal Act 1911 must be held by the time of the first meeting of the newly elected committee or within thirty days of the arising of the vacancy. The intention of the legislature is to have the members co-opted by the elected members and that also without loss of time. The power to hold a meeting of the elected members of a committee, to achieve this objective has been conferred on the representatives of the Government to guard against

indifference or any deliberate attempt of the elected members to delay or to do any mischief in co-option so that such co-option is made without delay. The Government has been given the right to make the nominations only when a committee has failed to perform its duty in making the co-option and not otherwise. This power of nomination by the Government, however, cannot be allowed to be used for the purpose of depriving the elected members of a committee of their valuable democratic right to make the co-option of the backward sections of the society. It is an established principle of law that the provisions of a statute should be interpreted in a manner which further the object of law and the interpretation which defeats the purpose of law should be avoided. Section 12-E of the Act which confers a right of nomination on the State Government has to be interpreted to the effect that the Government will have the right of nomination if the meeting of a committee though called within time for the purpose of co-option, fails to take a decision regarding co-option and this is the only way of harmonising the provisions of sections 12-D and 12-E of the Act.

(Paras 4 and 5).

*Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice M. R. Sharma, dated the 16th October, 1973 passed in Civil Writ No. 2209 of 1973.*

Bhagirath Dass, Advocate with S. K. Hiraji Advocate, *for the appellant.*

H. S. Brar Sr. D.A.G. for respondents 1 to 4, *for the respondents.* ...

JUDGMENT

*Harbans Lal, J.*

(1) This letters patent appeal is directed against the judgment of a learned Single Judge, dated October 16, 1973, by which Civil Writ Petition No. 2209 of 1973, filed by the appellant was dismissed.

(2) After completion of the elections to the Municipal Committee, Kapurthala, (hereinafter called the Committee), on June 18, 1972, in the first meeting of the newly elected Committee, co-option of two lady members was held, but the same was not in accordance with law. It was challenged in Civil Writ Petition No. 3911 of 1972, and was set aside by the order of the learned Single Judge dated April 25, 1973. According to the directions of the learned Single

Judge, co-optios of two lady members was to be held simultaneously at the same meeting, but no time was fixed to call a meeting for the said purpose. The meeting of the Committee was, however, called by the General Assistant to the Deputy Commissioner as convener on June 27, 1973, and respondents Nos. 5 and 6 were duly co-opted as lady members. This co-option was challenged in the writ petition on the ground that under section 12-D of the Punjab Municipal Act, (hereinafter called the Act), it was mandatory to make the co-option within 30 days from the date of the election of the Committee or the order of the learned Single Judge in the earlier writ petition. As the said co-option was not held within this prescribed time, the Committee had no right or jurisdiction to make the co-option and it was for the State Government to make nomination under section 12-E of the Act. This contention did not find favour with the learned Single Judge and consequently, the writ petition was dismissed. The present appeal has arisen out of that order of the learned Single Judge.

(3) According to the contention raised by the learned counsel for the appellant, a perusal of sections 12-D and 12-E of the Act, makes it absolutely clear that the Committee had no right to make any co-option under sections 12-A, 12-B, and 12-C, after the expiry of 30 days from the date of election and that such a right vested in the State Government. Sections 12-D and 12-E, are reproduced below :

"12-D. Co-option under sections 12-A, 12-B and 12-C in the case of a newly constituted committee shall be made in a meeting of the elected members held for the purpose of administering oath of allegiance to them and in case of any other committee within a period of thirty days from the date of commencement of the Punjab Municipal (Amendment) Act, 1972;

Provided that whenever a vacancy occurs by death, resignation, removal or otherwise of a co-opted member, the co-option shall be made within a period of thirty days from the occurrence of the vacancy."

"12-E. In the event of failure to co-opt a member under sections 12-A, 12-B, or 12-C, as the case may be, in accordance with the provisions of section 12-D, the elected members of the committee shall cease to have the right of

> co-option of such member and thereupon the State Government may nominate a person who is eligible to be co-opted under sections 12-A, 12-B or 12-C as the case may be, to be a member of such committee.

According to amended rule 5 of the Municipal Election Rules, 1952, (hereinafter called the Rules), the Deputy Commissioner of a District or any Gazetted Officer appointed by him is required to call a meeting of the newly elected members of a Municipal Committee within 14 days of the publication of the result of election for the purpose of administering oath to the newly elected members and also to make co-option of ladies, members of scheduled castes, or backward classes, as provided under sections 12-A, 12-B and 12-C of the Act. Under sub-rule (2) of this rule, the meeting is to be held under the 'convener'. Though the expression 'convener' has not been defined under the Rules, yet he can be no other than the officer who is authorised by the Deputy Commissioner to call the meeting of the newly elected members of a Municipal Committee and also to administer oath of allegiance to them. Under sub-rules (6) and (7) of this rule, the same procedure is to be followed for the purposes of co-option of members of a Municipal Committee other than a newly constituted Municipal Committee, or in the event of a vacancy occurring by death, resignation, removal or otherwise a co-opted member. This is also laid down in section 17 of the Act.

(4) According to the learned counsel for the appellant, the provisions of the Act and the Rules do not admit of any interpretation other than that if the co-option is not held within 30 days of the publication of the result of the newly elected Municipal Committee or the arising of a vacancy of a co-opted member, the Municipal Committee loses the right to co-opt any person and the right instead vests in the Government to make a nomination. *Prima facie*, this argument looks to be attractive, but we cannot lose sight of the intention of the legislature in enacting these provisions. For a considerable time, there was no provision for co-option and the members of Municipal Committees comprised of only elected members. It was only by the Punjab Act 10 of 1972, that section 12 of the Act was substituted and recast so as to include co-opted members. According to sections 12-A, 12-B, and 12-C, if no person belonging to the scheduled caste of Balmiki, Chura or Bhangi, no woman or no person from amongst any of the backward classes, as specified in Schedule

II to the Act, was elected to a committee, provision was made to co-opt at least one member from each of the categories, and in case of women, co-option was to be made so as to provide for at least two women members in a committee. The right to co-opt such members was conferred on the elected members of a committee under section 12-D and it was made mandatory in the proviso to this section that the co-option must be held within 30 days from the occurrence of the vacancy or the election of the members of a committee. If the co-option thus provided was not made within the specified period, the Government has been given the right to make the nominations to give representation to these categories. The scheme of the Act is very clear. It shows the anxiety of the legislature to include the representatives of the scheduled castes, backward classes and women in every elected Municipal Committee who form a considerable section of the society in any urban area. The legislature was conscious of the fact that in direct elections, this backward section may not succeed in returning their representatives. So, it thought fit to provide that in case these sections of the society are not returned in the minimum strength, as provided, the elected members of a committee will have the right to co-opt persons from these categories. The right of co-option has been given in the first instance to the elected members of a committee as against the right of the Government to make nominations in this regard. It was also felt that the elected members of a committee, in some cases, may not have anxiety or enthusiasm to have the representatives of the backward classes amongst them and on one plea or the other, they may not hold the meeting for the purpose of co-option. In order to avoid this situation, it has been provided that a meeting for the purpose of co-option shall be convened by the Deputy Commissioner or any officer authorised by him as convener and that the co-option shall be held under his supervision and control. It has also been clearly laid down that the co-option must be held at the time of the first meeting of the newly elected committee, or within 30 days of the arising of the vacancy. According to the scheme of the statute, there can be no ambiguity about the intention of the legislature to have the members co-opted by the elected members and that also without loss of time. The power to hold a meeting of the elected members of a committee, to achieve this objective, has been conferred on the representative of the Government to guard against the indifferent or deliberate attempt of the elected members, and to make the co-option without delay or any mischief. However, the intention of the legislature is also very clear that the Government has

been given the right to make the nominations only when a committee has failed to perform its duty in making the co-option and not otherwise. This power of nomination by the Government, however, cannot be allowed to be used for the purpose of depriving the elected members of a committee of their valuable democratic right to make the co-option of the backward sections of the society.

(5) In the present case, it is clear from the written statement filed by the General Assistant to the Deputy Commissioner, respondent No. 3, that a meeting for the purpose of co-option of lady members was convened only on June 27, 1973, and the meeting was thus held on June 30, 1973, when the co-option took place. It is further clear from paragraph 14 of the reply that this meeting was convened by the General Assistant to the Deputy Commissioner as convener after receiving a directive from the Director, Local Government, Punjab, on May 30, 1973. Thus, if the meeting for the purpose of making co-option was not called by the authorised representative of the Deputy Commissioner, the elected members of the Committee are not to blame and the preferential right of the Committee to make the co-option cannot be allowed to be set at naught by the inadvertence or negligence; whether wilful or otherwise, of the officer concerned. If it is held that in case a meeting of a committee for the purpose of making co-option is not held within 30 days; may be even due to fault of the convener and for no fault of the elected members, and the Government would be entitled, to make the nominations, the very purpose of the law to confer the right of co-option on the elected members of a committee would be defeated. In such a case, whenever the Government wants to impose its own nominees on any Municipal Committee, the Deputy Commissioner or his authorised representative can be instructed not to call any such meeting. It is established principle of law that the provisions of a statute should be interpreted in a manner which further the object of law, and the interpretation which defeats the purpose of law should be avoided. Keeping this in view, section 12-E of the Act which confers a right of nomination on the State Government has to be interpreted to the effect that the Government will have the right of nomination if the meeting of a committee though called within time for the purpose of co-option, fails to take a decision regarding co-option and, in fact, this is the only way of harmonising the provisions of sections 12-D and 12-E of the Act.

(6) The learned counsel for the appellant has not challenged the impugned judgment on any other ground.

For the reasons mentioned above, this appeal has no merit and is dismissed with no order as to costs.

Gurnam Singh, J.—I agree.

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*K. T. S.*

CIVIL APPELLATE

*Before S. S. Sandhawalia and S. C. Mital, JJ.*

GURDIAL SINGH,—*Appellant.*

*versus*

MASSA SINGH, ETC.,—*Respondents.*

*Execution Second Appeal No.* 1280 *of* 1969

November 11, 1976.

*Code of Civil Procedure (Act V of* 1908)—*Sections* 148 *and* 149—*Whether apply to appeals—Copy of impugned judgment inadequately stamped—Deficiency in court-fee made up after the period of limitation—Appellant—Whether entitled to the benefit of section* 149.

*Held*, that sections 148 and 149 of the Code of Civil Procedure 1908 are equally attracted to the appeals presented in the High Court or Courts below as also to suits in the original trials.

(Para 18).

*Held,* that the language of section 149 of the Code is of the widest amplitude and gives untrammelled powers to the court in its discretion to allow the making up of any deficiencies in the court-fees and this can be done at any stage irrespective of bars of limitation or the alleged creation of vested rights in one or the other of the parties. Unless the Court comes to the finding that the litigant was acting *mala fide* or with contumacy, the appellant would be entitled to the benefit of section 149 and discretion should be exercised in his favour by allowing him to make up the deficiency in the court-fee. (Paras 9 and 18),

CASES OVER RULED

1. *Shahadat and others* v. *Hukam Singh, A.I.R*: 1924 *Lah*: 401: